



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



A 1 Super Market, Inc.
85 South Main Street
Manchester, NH 03102

Attn: Dana E. Moody, President

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
AND HEARING
No. AF 2000-016**

April 6, 2000

I. Introduction

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Waste Management Division ("the Division") to A 1 Super Market, Inc., pursuant to RSA 146-C:10-a and Env-C 601.05. The Division is proposing that fines totaling \$4,000 be imposed against A 1 Super Market, Inc., for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. Parties

1. The Department of Environmental Services, Waste Management Division ("the Division"), is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. A 1 Super Market, Inc., is a NH Corporation and has a mailing address of 85 South Main Street, Manchester, NH 03102.

III. Summary of Facts and Law Supporting Claim(s)

1. RSA 146-C:10-a authorizes the Commissioner of the Department of Environmental Services (DES) to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-C.
2. Pursuant to RSA 146-C:10-a, I, the Commissioner has adopted Env-C 607 to establish the schedule of fines for violations of RSA 146-C.
3. A 1 Super Market, Inc., was the owner of two gasoline underground storage tank ("UST") systems, located at on property at 85 South Main Street, Manchester, NH, further identified as UST # 0-112663 ("the Facility").
4. The Facility is subject to the requirements of RSA 146-C and the rules adopted pursuant to that chapter, NH Admin. Rules Env-Wm 1401.

5. Env-Wm 1401.32 requires all existing steel USTs to be protected from corrosion no later than December 22, 1998, by meeting the requirements of Env-Wm 1401.32(i), or USTs shall be permanently closed.
6. A1 Super Market, Inc. did not permanently close the two USTs at the facility until October 1, 1999, more than nine months after the deadline.
7. Division records show that the two USTs at the Facility, which were permanently closed on October 1, 1999, did not have corrosion protection.
8. Env-Wm 1401.33(b) requires all existing metal piping that routinely contains regulated substances and is in contact with the soil or other backfill material be protected from corrosion no later than December 22, 1998.
9. Division records show that the two pipe systems at the Facility, which were permanently closed on October 1, 1999, did not have corrosion protection.

IV. Violations Alleged

1. A 1 Super Market, Inc., has violated Env-Wm 1401.32 by failing to protect two existing steel underground storage tanks from corrosion or performing permanent closure no later than December 22, 1998.
2. A 1 Super Market, Inc., has violated Env-Wm 1401.33 by failing to protect two existing steel piping systems that routinely contained regulated substances and were in contact with the soil or other backfill material from corrosion no later than December 22, 1998.

V. Proposed Administrative Fines

1. For the two violations identified in IV.1. above, Env-C 607.03(e) specifies a fine of \$1,000 per violation. The Division is seeking a total of \$2,000 for these violations.
2. For the two violations identified in IV.2. above, Env-C 607.03(f) specifies a fine of \$1,000 per violation. The Division is seeking a total of \$2,000 for these violations.

The total fine being sought is \$4,000.

VI. Hearing, Required Response

A 1 Super Market, Inc., has the right to a hearing to contest the Division's allegations before the fine is imposed. A hearing on this matter has been scheduled for **Monday, June 26, 2000, at 1:00 p.m. in Room C-110** of the DES offices at **6 Hazen Drive** in Concord, NH.

Pursuant to Env-C 601.06, A 1 Super Market, Inc., is required to respond to this notice. Please respond no later than April 28, 2000, using the enclosed form as follows:

1. If A 1 Super Market, Inc., plans to attend the hearing, please have an authorized representative sign the appearance (upper portion) and return it to James Ballentine, DES Enforcement Paralegal, at the address noted on the form.
2. If A 1 Super Market, Inc., chooses to waive the hearing and pay the proposed fine, please have an authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to Mr. Ballentine.
3. If A 1 Super Market, Inc., wishes to discuss the possibility of settling the case, please have an authorized representative sign the appearance and return it to Mr. Ballentine **and** call Mr. Ballentine to indicate A 1 Super Market, Inc.'s interest in settling.

A 1 Super Market, Inc., is not required to be represented by an attorney. If A 1 Super Market, Inc., chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

If A 1 Super Market, Inc., wishes to have a hearing but is unable to send an authorized representative to the hearing as scheduled, A 1 Super Market, Inc., must notify Mr. Ballentine at least one week in advance of the hearing and request that the hearing be rescheduled. If A 1 Super Market, Inc., does not notify Mr. Ballentine in advance and does not have an authorized representative attend the hearing, the hearing will be conducted anyway in accordance with Env-C 202.08.

VII. Determination of Liability for Administrative Fines

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that A 1 Super Market, Inc., committed the violation(s) alleged and that the total amount of fine(s) sought is the appropriate amount under the applicable statute and rules. Proving something by "a preponderance of the evidence" means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that A 1 Super Market, Inc., committed the violation(s) and that the amount of fine(s) sought is the appropriate amount under the applicable statute and rules, then the fine(s) sought will be imposed, subject to the following:

☆ Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that A 1 Super Market, Inc., proves, by a preponderance of the evidence,** applies in this case:

1. The violation was a one-time or non-continuing violation, **and** A 1 Super Market, Inc., did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** A 1 Super Market, Inc., did not benefit financially, whether directly or indirectly, from the violation.

At the time the violation was committed, A 1 Super Market, Inc., was making a good faith effort to comply with the requirement that was violated.

3. A 1 Super Market, Inc., has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to A 1 Super Market, Inc.'s, case that was not known to the Division at the time the fine was proposed.

☆☆☆☆☆ **IMPORTANT NOTICE** ☆☆☆☆☆

The hearing that has been scheduled is a formal hearing. The hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that A 1 Super Market, Inc., committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is A 1 Super Market, Inc.'s, opportunity to present testimony and evidence that A 1 Super Market, Inc., did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If A 1 Super Market, Inc., has any evidence, such as photographs, business records or other documents, that A 1 Super Market, Inc., believes show that A 1 Super Market, Inc., did not commit the violation(s) or that otherwise support A 1 Super Market, Inc.'s, position, A 1 Super Market, Inc., should bring the evidence to the hearing. A 1 Super Market, Inc., may also bring witnesses (other people) to the hearing to testify on A 1 Super Market, Inc.'s, behalf.

If A 1 Super Market, Inc., wishes to have an informal meeting to discuss the issues, A 1 Super Market, Inc., must contact **Mr. Ballentine at (603) 271-6072 to request a prehearing conference.**

☆☆☆☆☆

Information regarding this proposed fine may be made available to the public via DES's Web page (www.state.nh.us/des). If A 1 Super Market, Inc., has any questions about this matter, please contact James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.

COPY

Philip J. O'Brien, Ph.D., Director
Waste Management Division

Enclosure (NHDES Fact Sheet #CO-2 1999)

cc: Gretchen Rule, DES Enforcement Coordinator
Susan Alexant, DES Hearings and Rules Attorney
James Ballentine, DES Enforcement Paralegal
Thomas R. Beaulieu, Chief UST Program
Lynn A. Woodard, P.E., Supervisor